

Mark A. Feller (SBN 319789)
mark.feller@morganlewis.com
MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Tel: 415.442.1000

Melissa Hill (*pro hac vice*)
melissa.hill@morganlewis.com
MORGAN, LEWIS & BOCKIUS, LLP
101 Park Avenue
New York, NY 10178
Tel: 212.309.6000

Sean K. McMahan (*pro hac vice*)
sean.mcmahan@morganlewis.com
MORGAN, LEWIS & BOCKIUS, LLP
1717 Main Street, Suite 3200
Dallas, TX 75201-7347
Tel: 214.466.4000

Jared R. Killeen (*pro hac vice*)
jared.killeen@morganlewis.com
MORGAN, LEWIS & BOCKIUS, LLP
2222 Market Street
Philadelphia, PA 19103
Tel: 215 963 5000

Attorneys for Defendants X Corp., f/k/a Twitter, Inc.; X Holdings; Elon Musk; and Does

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

COURTNEY MCMILLIAN and RONALD COOPER

Plaintiffs.

V

X CORP., f/k/a/ TWITTER, INC.,
X HOLDINGS, ELON MUSK Does

Defendants

Case No. 3:23-cv-03461-TLT

**DEFENDANTS' ADMINISTRATIVE
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFING**

Judge: Trina L. Thompson
Magistrate Judge: Robert M. Illman
Date: June 18, 2024
Time: 2:00 pm PT

1 Pursuant to Civil Local Rules 7-3(d) and 7-11, Defendants X Corp., X Holdings Corp., and
 2 Elon Musk (together “Defendants”) respectfully submit this Administrative Motion for Leave to
 3 File Supplemental Briefing in Support of their Motion to Dismiss the Amended Complaint
 4 (Dkt. 38), and in response to Plaintiffs’ Answers to the Court’s Notice of Questions (Dkt. 75).

5 On April 3, 2024, the Court entered a Notice of Questions (Dkt. 65), instructing the parties
 6 to answer eight questions posed by the Court about, among other things, Plaintiffs’ claim that
 7 Twitter Inc. maintained an ERISA-governed severance plan. At the same time, the Court vacated
 8 the oral argument related to Defendants’ Motion to Dismiss that had been scheduled for April 9,
 9 2024. Plaintiffs filed their Answers to the Court’s Notice of Questions on April 12, 2024. Dkt. 75
 10 (the “Answers”). Plaintiffs’ Answers contain additional arguments and allegations not included in
 11 the parties’ Motion to Dismiss briefing or Plaintiffs’ Amended Complaint. Plaintiffs also submitted
 12 new documents that had not been attached to the Amended Complaint, including one titled “Twitter
 13 Acquisition: Tweep FAQ” and a “Declaration of Courtney McMillian” (Dkt. 75-1). The McMillian
 14 Declaration purports to assert new facts, including references to and descriptions of the so-called
 15 “Severance Matrix” that is currently filed under provisional seal.

16 Defendants have not had the opportunity to respond to Plaintiffs’ new allegations, legal
 17 arguments, and documents. To the extent such new information is considered by the Court in
 18 connection with Defendants’ pending Motion to Dismiss—and thus deemed to supplement the
 19 Amended Complaint—Defendants will be significantly prejudiced without the opportunity to
 20 respond as to the sufficiency of such new allegations and legal arguments to state a claim under
 21 Rule 12(b)(6). Therefore, Defendants respectfully request permission to submit a short (5-page)
 22 supplemental brief addressing Plaintiffs’ Answers for the purposes of the pending Motion to
 23 Dismiss.¹

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25 ¹ On April 9, 2024, Plaintiffs filed an Administrative Motion for Leave to File a Sur-Reply
 26 responding to Defendants’ Reply in Support of their Motion to Dismiss. Dkt. 67. Defendants filed
 27 an opposition to Plaintiffs’ motion. Dkt. 72. On April 15, 2024, Defendants proposed to Plaintiffs
 28 that the parties stipulate to allow both sides additional briefing. As part of the stipulation,
 Defendants would withdraw their opposition to Plaintiffs’ untimely Administrative Motion for
 Leave to File a Sur-Reply, and Plaintiffs would not oppose Defendants’ supplemental briefing or a
 short sur-sur-reply. On April 16, 2024, Plaintiffs rejected the proposed stipulation. Should the
 Court grant Plaintiffs’ Administrative Motion for Leave to File a Sur-Reply, Defendants request
 permission to file a short sur-sur-reply.

1 Dated: April 19, 2024
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MORGAN, LEWIS & BOCKIUS LLP

3 By /s/ Melissa Hill
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Melissa Hill (pro hac vice)
Sean McMahan (pro hac vice)
Jared R. Killeen (pro hac vice)
Mark A. Feller

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6 Attorneys for Defendants
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